

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TANNER MATTHEW NESS,

Petitioner,

v.

DAN WHITE,

Respondent.

CASE NO. C23-566 BHS

ORDER

THIS MATTER is before the Court on pro se petitioner Tanner Matthew Ness's motion for extension of time, Dkt. 19, to file objections to Magistrate Judge S. Kate Vaughan's Report and Recommendation (R&R), Dkt. 16, recommending the Court deny Ness's 28 U.S.C. § 2254 habeas petition, Dkt. 4.

Ness has already objected to the R&R. Dkt. 18. After he filed his motion for an extension of time, Ness filed additional objections, Dkt. 20, as well as two declarations in support of his objections, Dkts. 21 and 22. His motion seeks 30 additional days to file objections.

1 The Court will consider both of Ness's objections, and his declarations, in
2 evaluating the R&R. It will not further extend the objection deadline. Ness's motion for
3 an extension of time is, to that extent, **GRANTED**.

4 Ness's motion also asks the Court to appoint counsel, based primarily on his
5 history of a traumatic brain injury. Dkt. 19 at 2. Under the Criminal Justice Act, courts
6 may appoint counsel for a § 2254 petitioner whenever "the interests of justice so require."
7 18 U.S.C § 3006A(a)(2)(B); *see also* 18 U.S.C. § 2254(h). A petitioner in collateral
8 postconviction review proceedings has no constitutional right to representation.
9 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Furthermore, the Rules Governing
10 Section 2254 Cases in the United States District Courts do not contemplate the
11 appointment of counsel absent a court's grant of an evidentiary hearing or discovery.
12 Rules 6(a), 8(c) of the Rules Governing Section 2254 Cases.

13 Ness has not persuaded the Court that the interests of justice require appointment
14 of counsel in this case. His motion for appointment of counsel is **DENIED**. The R&R
15 will be addressed in a separate Order.

16 **IT IS SO ORDERED.**

17 Dated this 12th day of December, 2023.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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